

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

VOLUME 1 OF 1

UNITED STATES OF AMERICA

EP:13-CR-0370-DG

v.

EL PASO, TEXAS

MARCO ANTONIO DELGADO

May 17, 2016

STATUS HEARING

THE HONORABLE DAVID C. GUADERRAMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Luis Gonzalez
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2 (Proceedings begin at 9:57 a.m.)

3 * * * * *

4 (Open court.)

5 THE COURTROOM DEPUTY: EP:13-CR-370, Marco Antonio
6 Delgado.

7 THE COURT: I'd ask for announcements, please.

8 MS. KANOF: Good morning, Your Honor. Debra Kanof,
9 Anna Arreola and Jose Gonzalez for the United States.

10 THE COURT: Good morning to all of you.

11 MS. FRANCO: Good morning, Your Honor. Maureen Franco
12 and Erik Hanshew on behalf of Mr. Delgado. We're ready.

13 THE COURT: All right. Good morning to both of you.

14 All right. I wanted to have this status hearing, so I
15 can get a better grasp on what actually happened in regards to
16 that subpoena and then where I'm going to go from here.

17 The first thing I want to know is because I guess I
18 can assume that the subpoena was actually served on Mr. Gireud
19 in Federal Court, apparently those returns aren't filed and
20 courts are left to guess, I guess, if subpoenas have been
21 served.

22 MS. FRANCO: Yes, Your Honor. It was served on one of
23 Mr. Gireud's attorneys, Rene -- well, had represented him the
24 past -- Rene Ordoñez had accepted service that said he did not
25 represent him with regard to that compliance with the subpoena,

1 but he did accept service and gave it to Mr. Gireud.

2 THE COURT: All right. So if I hold a show cause
3 hearing to hold Mr. Gireud in contempt for failing to comply
4 with a subpoena, is that sufficient that you serve someone that
5 used to represent him in the past and then we go on that?

6 MS. FRANCO: Well, Your Honor, he accepted service on
7 his behalf. And of course, Mr. Gireud has not filed anything
8 seeking that he didn't receive proper service of it, but federal
9 rules are different on the service of subpoena. I mean pretty
10 much anyone can serve a subpoena on someone.

11 THE COURT: Okay. So then because he, I'm thinking
12 from your pleadings, he showed up at the Government's office,
13 and from the Government's response that that in fact is true,
14 that he showed up at the Government's office with these
15 documents, so I guess I can safely assume that he was served.

16 MS. FRANCO: Yes, sir.

17 THE COURT: All right. So then I can set him for a
18 show cause.

19 If you give me an affidavit telling me all of these
20 things you just told me that I can use for my show cause, I'll
21 serve him with a show cause as to why he should not be held in
22 contempt for failing to comply with the directive.

23 Now, I looked at the subpoena. Was the Court's order
24 attached to the subpoena? Because that subpoena doesn't say
25 anything.

1 MS. FRANCO: Let me check, Your Honor.

2 Yes, Your Honor, it was.

3 THE COURT: So all of those documents are then
4 attached to that cover sheet and then that's what's served on
5 the defendant.

6 MS. FRANCO: Yes -- on the witness, Your Honor.

7 THE COURT: I'm sorry, on the witness. And he reads
8 through that order and figures out what he's supposed to do?

9 MS. FRANCO: Yes, sir.

10 THE COURT: Okay. All right. So I know that's where
11 we're at.

12 Now, from reading your pleadings, and I saw all of the
13 things you raised, the thing that concerned me was that you're
14 alleging that Mr. Gireud shows up with, let's say, 20 different
15 documents to the Government's office. The Government looks
16 through them and says, well, here's 15 we'll give to the Court.
17 These five don't -- aren't responsive, so take those back, you
18 don't need to produce those. That's kind of what -- something
19 like that was what you were alleging?

20 MS. FRANCO: It's possible, Your Honor. I mean that's
21 the problem with the Government interjecting itself into this
22 subpoena process is that we're not sure exactly what happened.

23 THE COURT: Right. Well --

24 MS. FRANCO: I mean it wasn't 20 documents, Your
25 Honor. I mean, I don't know --

1 THE COURT: Oh, I know. I'm just using that as --

2 MS. FRANCO: It was 300 pages and that they tried to
3 say that they perused it, but they were able to find a tax
4 return in the middle of it, and so -- I mean, obviously, they
5 made copies of it.

6 THE COURT: All right. You're way past me right now.

7 MS. FRANCO: Okay.

8 THE COURT: I'm just trying to get the basics done.

9 MS. FRANCO: Yes, sir.

10 THE COURT: All right. There's nothing that prevents
11 a witness from getting subpoenaed and going to the Government,
12 right? I mean, he could've gone to the Government, showed them
13 the documents and then come here to the court complying with the
14 subpoena --

15 MS. FRANCO: Yes.

16 THE COURT: -- and violated no rule.

17 MS. FRANCO: Correct, Your Honor. He didn't.

18 THE COURT: Right, because that's why I'm going slowly
19 because I'm trying to see what actually happened.

20 MS. FRANCO: Yes, Your Honor.

21 THE COURT: So you're saying that he showed up with
22 "X" amount of documents, but then only "X" minus "Y" was
23 delivered to the Court. "Y" was then returned with Mr. Gireud
24 back to his house.

25 MS. FRANCO: I don't know, Your Honor.

1 THE COURT: I'm reading -- I'm talking about your
2 pleadings.

3 MS. FRANCO: Well, Your Honor, I don't think that's
4 the position that we took.

5 THE COURT: Tell me what it is.

6 MS. FRANCO: Thank you, Your Honor, I will.

7 Our position is that through a series of telephone
8 conversations that Mr. Gireud had with the case agent and with
9 the Government, he was given legal advice as to how to comply
10 with the subpoena. He was told not to substitute items that
11 were not specifically requested.

12 THE COURT: The only thing I want to know right now is
13 if he showed up with documents, left some and went home with
14 some.

15 MS. FRANCO: That's why we would need to have an
16 evidentiary hearing to find out. We don't know. That's the
17 problem.

18 THE COURT: But that's what you are alleging or at
19 least wanting me to believe that's what happened.

20 MS. FRANCO: Your Honor, what we wanted the Court to
21 be concerned about is to determine whether or not that indeed
22 happened. We don't know, because all we know is that Mr. Gireud
23 showed up with some documents and Ms. Kanof received those
24 documents and some documents were returned to the Court pursuant
25 to a subpoena.

1 We had requested several documents that were not
2 returned by Mr. Gireud either, because he was instructed by the
3 Government, well, they don't exist, you can't present them or
4 that he tried to substitute documents in and they told him not
5 to.

6 THE COURT: Okay. So that's what I'm talking about.

7 MS. FRANCO: Yes, sir.

8 THE COURT: That's the "Y."

9 MS. FRANCO: Yes, sir.

10 THE COURT: The documents that he had that weren't
11 turned over.

12 MS. FRANCO: Correct. That's our impression, Your
13 Honor.

14 THE COURT: All right.

15 So let me hear from Ms. Kanof.

16 Is -- are you saying she is the one that dealt with
17 Mr. Gireud? He's the one that has this knowledge?

18 MS. FRANCO: Yes, Your Honor.

19 THE COURT: Ms. Kanof, tell us what you think
20 happened.

21 MS. KANOF: On Wednesday afternoon or I guess it was
22 early afternoon on Wednesday, April 6th, I was sitting in my
23 office and AUSA Arreola came to me and said that Agent Fry had
24 called her and said that Mr. Gireud wanted to talk to us. We
25 don't know what it was about.

1 We placed a conference call from my telephone and
2 Mr. Gireud said that he had received a subpoena. We're aware he
3 had received this subpoena because Mr. Fry had told us that
4 already.

5 The first thing he said was didn't you give the
6 defense all of the documents --

7 THE COURT: This is Mr. Gireud?

8 MS. KANOF: It was a conference call with Mr. Fry --
9 didn't you give all of the documents that I gave to you to them?
10 And I said, yes, of course we did. And he said, well, most of
11 what he's asked for I already gave you. So, do I have to give
12 it to them again?

13 Prior to that, I had said, did you call Mary? Mary
14 Stillinger was his attorney until the middle of last week. I
15 had been in constant communication with her and I had e-mails.
16 Ever -- the case has been reset eight times. Every time it was
17 reset, I would tell her. She's given us permission to talk to
18 him in her absence, both for the agents and the AUSA.

19 THE COURT: Ms. Stillinger gave someone in your office
20 permission to talk to Mr. Gireud.

21 MS. KANOF: Correct. In her absence, she gave the
22 AUSAs and the case agent permission that -- from the very
23 beginning, she gave to Ms. Fielden and then reiterated to us
24 that we're free to discuss with him. He is my witness for
25 preparation and since the case has been set so many times, I had

1 engaged in preparation of him more than one time, never alone,
2 always with other people present.

3 During this conversation, he -- I first asked him, did
4 you talk to Ms. Stillinger? He had, according to Agent Fry, he
5 had spoken with him before and Agent Fry had said you need to
6 call your lawyer. He said -- my understanding is that he told
7 Agent Fry that Rene Ordoñez wouldn't discuss it with him,
8 because he was only his lawyer for the civil case, the lawsuits
9 that are ancillary to this, and that he had tried to get ahold
10 of Mary Stillinger and could not. On more than one -- one
11 occasion, Agent Fry and AUSA Arreola had said, tell him to call
12 his lawyer.

13 Now, in this conversation, we were caught off guard.
14 We don't know what it was going to be about and he started
15 talking about this. The first thing I said is, did you call
16 your lawyer? I tried many times. I have not gotten a response.

17 Then he asked whether or not we had provided the
18 documents, and I said, yes. Well, then why do I have to give it
19 to them again? Because the subpoena says you do. And then he
20 said, well, some of the things don't even exist. Well, if it
21 doesn't exist, you can't very well give it to them.

22 In the middle of the conversation, he related that his
23 daughter was getting married that Saturday. He was very, very
24 distressed and concerned that he do the right thing. He said he
25 had actually missed out on some of the festivities and

1 participation, because he was spending so much time to respond
2 to items he didn't understand or may not exist.

3 At one point, he -- well, during the process,
4 Ms. Arreola or either Agent Fry or Ms. Arreola says, you have
5 the subpoena. I e-mailed it to you. I didn't realize that. He
6 e-mailed it to both of the AUSAs, but neither of us bothered to
7 open it. I popped it open to continue discussing it with him.

8 When I popped it open, I took a look at it and
9 realized it was in violation of Rule 17(c). Not only --

10 THE COURT: Is that the discovery issue you were
11 talking about where you're circumventing discovery?

12 MS. KANOF: I'm sorry?

13 THE COURT: Was that the issue raised about
14 circumventing the discovery?

15 MS. KANOF: Yes, Your Honor. Oddly enough, about two
16 weeks before that when I was out of town, I had received a
17 request from one of our (indiscernible) on a motion to suppress.
18 It was a little fresh in my mind and I took a look at it and he
19 -- the third thing he said to me was I don't have this item. He
20 identified one item. I don't recall. And we, of course, had
21 discussed it and none of us recall what item he pointed to,
22 because we're trying to get through this, and he said I don't
23 have this item, but I've been searching. Maybe I have something
24 that's related to it. And that's when I said you just are
25 supposed to comply with the subpoena. Don't substitute things

1 that are not asked for.

2 He said can I bring them to you so that you can make
3 sure that I did the right thing, that I complied with the
4 subpoena? And I told him that I would review it with him on
5 Monday, the day that it was due, April the 11th. Before that
6 was a possibility, he called me early Monday morning and he was
7 crying. He was very upset about having lost his mother. Excuse
8 me. He is a very kind man and he spent a long time telling me
9 about his mother and that she was so kind that she had waited
10 until his daughter got married to die, because she had died on
11 Sunday after the wedding. I told him that -- I told him if he
12 brought the documents to my office, I would walk across the
13 street with him and go to the court. And he did present them
14 and -- and he said he needed to leave to fly to Torreón to take
15 care of the things for his mother. I said bring the documents
16 to me. I'll make sure the Court gets them.

17 About ten o'clock in the morning -- I even told him
18 just drive by, call me and I'll run out and pick them up. I
19 don't want you to have any more stress.

20 THE COURT: This was on Sunday?

21 MS. KANOF: Monday, the day they were due.

22 And he called me on Monday -- no, I'll come in. We'll
23 meet you in the lobby. We met in the lobby, gave condolences,
24 spoke about his mother, handed the package, went upstairs. I
25 handed the package to my legal assistant to make copies. It

1 took her a little while -- meticulous folders for the Court --
2 but immediately prior to that, I put it on -- pulled out the
3 pullout on the side of my desk. Ms. Arreola stood to my left.
4 And we literally took the corner and went like that to see if
5 they were voluminous.

6 It jumped out at me because I was considering filing
7 17(c) quash that there was a tax return and it also jumped out
8 at me that it was a personal -- so I looked at it. It was a
9 1040. The subpoena had not requested personal 1040s. It had
10 requested from FGG. And this was a personal 1040. We are
11 trained in our office that if anything that has personal
12 identification in it like Social Security numbers, dates of
13 birth have to be redacted. I knew I couldn't tamper with the
14 document, so I instructed my assistant take that, return, put it
15 in an envelope marked PPI, personal identification, personal tax
16 record. Even though I knew it was not compliant to the
17 subpoena, I didn't remove it and put it back in where it came
18 from so that nothing has been altered.

19 After a little while, after she had -- she made two
20 copies, one for myself and AUSA Arreola, we had read the order
21 before we did anything. We assure that the order was not
22 sealed, the subpoena was not sealed.

23 I will tell the Court that before this occurred,
24 Matthew Herrington, H-E-R-R-I-N-G-T-O-N, counsel for Mitsubishi,
25 had called me and had the identical conversation with me.

1 Mr. Herrington had called when he received the
2 subpoena, which he also sent to the Government, and said you --
3 didn't you give the disk we provided to the defense? And I
4 said, yes, we did. And he said, well, pretty much everything
5 we're asking for we may have, it's on that disk. And I said,
6 well, you know, what can I tell you, you to give it to them.
7 And he said, I'm thinking of making a motion to quash.

8 In lieu of that, that's what we gave to the Court,
9 sealed. He instead identified from the disk that was provided
10 to us by Mitsubishi and then directly to the defense without any
11 deletions the numbers of most of the items that had been
12 requested.

13 Rule 17 subpoenas are not a discovery tool and it's an
14 extreme measure and a showing has to be made to the Court. I
15 felt very strongly when I saw Mr. Herrington's subpoena that
16 that -- and Mr. Herrington and I did discuss it -- that there
17 had been no compliance of any of the four prongs of the United
18 States Phoenix or Nixon, as adopting (indiscernible.)

19 And so regardless when Gireud said that to me, I had
20 already heard it. And so on the Monday when -- after the copies
21 had been made, kind of for about an hour or so -- I was actually
22 working on a different case -- and that morning Mr. Gireud was
23 very upset that he hadn't had an opportunity to go through the
24 documents to make sure he was in full compliance. He -- and
25 because of his daughter's wedding felt like, you know, I want to

1 make sure I do the right thing, you know, I need more time. And
2 I said don't worry. Don't worry. I'll tell the Court that, you
3 know, what happened with your mother and that you want more
4 time.

5 And I had considered just calling the Court and
6 communicating this, but decided for full disclosure so defense
7 counsel would be aware of what happened, that I would do it in a
8 motion. I wasn't doing it as his counsel as an officer of the
9 Court to communicate something because he had no other
10 alternative.

11 So I quickly drafted a motion for extension of time to
12 comply with the subpoena explaining to the Court what had
13 occurred. And about an hour later, the U.S. Attorney Richard
14 Durbin called me and told me that he had received a call from
15 the Federal Public Defender, who was very angry, who was
16 accusing the Government of having engaged in a legal
17 relationship with Mr. Gireud and having represented him as
18 counsel.

19 He indicated to me that he had asked Ms. Franco, what
20 do you want? What's the remedy? What will make you happy? He
21 said that she wanted us to withdraw the motion. She wanted us
22 to explain what happened and explain what we did. But most
23 importantly, she wanted us to give them a copy of the documents.

24 So when I hung up the phone, I immediately told my
25 legal assistant to run up to FPD before 5 o'clock -- this is

1 like 4:30 -- and give them my copy, which she did before close
2 of business. Then Mr. Durbin told me to file a motion to
3 withdraw the motion for extension of time and explain why.

4 That night after having a discussion with Ms. Arreola,
5 I called -- I am supervised directly by the Chief of Criminal,
6 Ms. Leachman. She's also professional responsibility officer.
7 I won't disclose, because I think it's privileged what I
8 discussed with her, but she directed me to be a little more
9 specific and file an amended motion to withdraw. And what she
10 actually said was draw a footnote. Look, let's -- a full
11 disclosure. I'll do it in the body and I won't tell you what
12 advice she gave me as far as legal advice, so I did that.

13 The next morning, I wrote a little more in depth to
14 withdraw the conversation that I had had with Mr. Gireud to be a
15 little more complete. And that's basically what happened.
16 Every document that was turned over to the Government to go to
17 the Court was provided. Nothing was deleted, nothing was added
18 and nothing was read.

19 In fact, I will tell the Court I still have not looked
20 through those documents, because having read the subpoena and
21 talking to Mr. Gireud, I know they are just repetitious. It was
22 very clear that some of the things that were requested just
23 don't exist; copy of the website, are totally irrelevant and
24 improper.

25 Because of the dust-up, I did not file a motion to

1 quash. I just didn't want to create any more issues. But I did
2 have the opportunity and did submit to the authors of the
3 response what I had planned to submit to the Court in order to
4 quash that subpoena, and that's --

5 Have I left anything out?

6 (Sotto voce conversation.)

7 MS. KANOF: I just want to point out to the Court two
8 things; one, Ms. Arreola and Agent Fry were present during every
9 word that came out of my mouth to Mr. Gireud and, two, before
10 writing the amended motion, Chief Gonzalez came into my office.
11 Ms. Arreola and I wanted to make sure we were very accurate
12 about what I told Mr. Gireud. And we were calling Agent Fry.
13 Agent Fry lives in Arizona. We were counseling him to ask his
14 recollection of what I said. So -- for fairness and
15 completeness -- Jose Gonzalez walked into the office and we
16 said, could you please stay and be a witness to the conversation
17 we have with Agent Fry about the conversation I had with Gireud?
18 So AUSA Gonzalez stayed and listened to Agent Fry's rendition of
19 that conversation that occurred on April 6th between myself on
20 conference call with Agent Fry and Mr. Gireud, with Ms. Arreola
21 present in my office, and that's basically what happened.

22 THE COURT: All right. Thank you, Ms. Kanof.

23 All right. Did you have a response?

24 MS. FRANCO: Your Honor, I apologize for my voice.

25 I'm losing it for some reason, so, hopefully you'll be able to

1 understand what I'm saying.

2 Your Honor, with regard to what Ms. Kanof has related
3 to the Court, it's very clear that she did provide legal advice
4 to Mr. Gireud. He calls up first case agent. I got the
5 subpoena. I don't know what it all means. What do I do with
6 it? He then reaches out to Ms. Arreola, who says, call your
7 lawyer, the only response that should have been given to
8 Mr. Gireud.

9 Your Honor, just to correct something, Ms. Stillinger
10 told us she did not represent Mr. Gireud, because we sent the
11 subpoena to her and she's the one that told us about
12 Mr. Ordoñez. So at that point in time in March, she said she
13 did not represent him or we wouldn't have been going through
14 her.

15 For whatever reasons, his wife, daughter getting
16 married, the unfortunate death of his mother, he obviously sees
17 the AUSA office as his attorney, because he's asking for advice
18 on how to comply with the subpoena at issue. The simpler and
19 ethical thing, he could talk to a lawyer. If he didn't or
20 couldn't reach his lawyer, then it was up to him to comply with
21 a subpoena and come to the court to explain what it was.

22 By him indicating to Ms. Kanof that there was
23 something that was somewhat on point to what we were asking for
24 in the subpoena and her telling what's directly on point, don't
25 present it, it shows that she interfered with the issuance of a

1 subpoena that was up to the Court to decide whether or not that
2 response that he would have given would have been compliant with
3 your subpoena order that you issued.

4 I think that she did ultimate representing of him when
5 we agreed to accept those documents and then she filed a
6 document with the Court asking for more time for him to comply
7 with it and for her to potentially do a motion for quash, which
8 I think promised standing with regard to that, because the
9 subpoena went to a third party, at least we thought not to his
10 attorney, which is apparently she became during this process.

11 So I think with everything that's happened, Your
12 Honor, by what she's told the Court here today, she definitely
13 created an attorney-client relationship with this witness.

14 MS. KANOF: May I respond to a few factual
15 misrepresentations?

16 AUSAs never spoke to -- (indiscernible) told Mr. Fry
17 to tell Mr. Gireud to call his lawyer. That's number one.

18 Number two, after this incident, I called Mary
19 Stillinger to ask her, do you still represent him? And she did.
20 In fact, I have an e-mail from her husband. What Mary told me
21 was I don't know whether he tried to call me or not. I don't
22 give my client my -- certainly, I give them John's, her legal
23 assistant. She said I'll have to ask John. She did say
24 something about Mr. Gireud not having paid her and then she said
25 I'll have John talk to him. I got an e-mail from John Godinez

1 saying that he had talked to Mr. -- he did talk to Mr. Gireud.

2 I received a phone call, and I think it's in the
3 footnote of our response time, last week from a familiar Colin
4 Hobbs, who's an attorney in San Antonio. So, Colin Hobbs told
5 me that he was beginning his representation on that day, and on
6 that day Mary Stillinger's representation terminated. So I
7 spoke with Mary Stillinger and she agreed. She said, you
8 understand I am no longer -- she also sent me an e-mail -- you
9 understand I'm no longer the attorney. And I said, as of when?
10 And she said, as of today. And that was last week.

11 THE COURT: All right. Well, this is just a status
12 hearing. Okay. I'll let you put on whatever evidence you want
13 to put on Thursday after our final judge's conference, if you
14 have witnesses, whatever you want to do, make whatever record
15 you want to make, that's the time to make it.

16 Right now I wanted to find out about if Gireud was
17 actually served or not, what exactly he was served with. And if
18 you give me the affidavit, I'll schedule him for a show cause
19 hearing and he can show me why I shouldn't hold him in contempt
20 for not complying with the subpoena. I think he had plenty of
21 opportunity to comply. He chose to go see the Government. I
22 don't think there's anything wrong with that. He can certainly
23 do that, what he wants. This is America. And so I don't see
24 anything problematic with that. And I'll give you an
25 opportunity to put on whatever evidence you want to have.

1 I think that removing a member of the other branch of
2 government, that's a big deal, and so I would read the case that
3 you provided. I just barely read Ms. Kanof's response this
4 morning. But show me whatever cases you have where a court has
5 removed a prosecutor from a case and the reasons for that.
6 Maybe this wasn't perfect what happened, but it's -- I'm not at
7 this point as offended as you are.

8 MS. FRANCO: Right.

9 THE COURT: So I'm going to give you the opportunity
10 to show me how I should take that kind of offense where I'm
11 going to remove Ms. Kanof from the case, who's apparently been
12 with this case for the longest time, remove all of the United
13 States attorneys from the Western District of Texas. Show me
14 some authority and reasons why I would do something like that.

15 Here's the thing that concerned me is that the
16 Government received "X" amount of documents, sifted through
17 them, provided "X" minus "Y" to the Court and provided "Y" back
18 to Mr. Gireud. Ms. Kanof said that didn't happen.

19 MS. FRANCO: Right. I guess we'd have to get them
20 from Mr. Gireud if that's the case.

21 THE COURT: I'll give you the opportunity right after
22 our judge's conference of everything you want to put on, any
23 witnesses, whatever, at that time.

24 MS. FRANCO: Okay.

25 Your Honor, since we're here at a status conference,

1 and I know that you need to start working or bringing in a jury,
2 there are some recent developments in the case you need to be
3 aware of that's happening that could potentially affect this
4 trial date next week.

5 The contract FGG, which is the company that
6 Mr. Delgado was involved in with Mr. Gireud, had entered into a
7 bid agreement or contract with the electric company in Mexico.
8 That's the CFE contract. And it's a long contract with a lot of
9 attachments to that contract.

10 THE COURT: Is it in English or Spanish?

11 MS. FRANCO: It's in Spanish, Your Honor. The
12 Government only translated two of the attachments to the
13 contract and so we have a problem now because the entirety of
14 the contract should have been translated from Spanish to
15 English.

16 I think the Government's position is that those other
17 attachments aren't necessary for their case. Our argument is
18 Rule 106, which is a rule of completeness, if they're relying on
19 that contract, the contract is read as a whole, not just cherry
20 picking provisions out of the -- that account with the Mexican
21 government and our client Mr. Delgado. It's voluminous.

22 THE COURT: Rule 106 is an evidentiary rule that deals
23 with admitting evidence, whether or not they should be putting
24 together that under the rule of contracts, but if they produced
25 the exhibits and you want the entire document produced, it's

1 your obligation to provide the translated parts that you want to
2 admit.

3 MS. FRANCO: My point is back to the Court, if you
4 will with all due respect, is that improperly shifts the burden
5 to us since the Government is the one who's prosecuting
6 Mr. Delgado. And so if they're going to offer in this contract
7 as proof of his fraud, because of his compliance or fraudulent
8 activity with regard to that contract, then the entirety of the
9 contract should be submitted to the jury and to the Court for
10 consideration and that has not been done. And it's voluminous.
11 It's probably another 500 to 1,000s of pages of documents that
12 would need to be translated. If the Court is to rule it's on us
13 to do it, I haven't done it. I would need a court certified
14 interpreter and that can't be done by Monday.

15 THE COURT: I can't argue with that. I can tell you
16 that the rule of optional completeness is the rule of optional
17 evidentiary rule contract law who admits what and when. And so
18 I'm not changing any burdens on anybody. That's an interesting
19 argument, which certainly you can make, but the rule is the
20 rule. They produce it. And if you have something that should
21 come in contemporaneously, then you submit it. If you need
22 time to translate the documents, if you need a certified
23 interpreter -- when did you get those documents?

24 MS. FRANCO: Well, Your Honor, we've had them. We
25 haven't got all of the attachments until relatively recently,

1 because all of this stuff has been trickling in. So I think now
2 we have a complete set as a result of the subpoenas that were
3 served, and AUSAs and Mr. Gireud, that we now have the complete
4 set. It hasn't been that long that we've had the complete set.
5 The last time we were in court, the Government had indicated
6 they were going to be dropping translations on us. I don't --

7 THE COURT: Approximately 5,000 documents. That's how
8 much that --

9 MS. FRANCO: 5,000.

10 THE COURT: -- that contract is page-wise?

11 MS. FRANCO: I couldn't know. I think that 5,000 is
12 kind of a lot; 3,000 pages is a lot. It's a lot.

13 THE COURT: There was a contract that was 3,000 pages.

14 MS. KANOF: It's about 150 pages. We produced it on
15 March 20th, 2014. It was signed for by handwriting Sandra, last
16 name Duffy, maybe from the Federal Public Defender's office.

17 MS. FRANCO: They're misunderstanding what I'm saying.
18 I'm talking about all of the Mexican -- the attachments, the
19 exculpatory, those. That's what I'm talking about, which were
20 attachments to the contract that are referenced in the contract.
21 They're in the last page of the C -- yes, we've had all of that
22 stuff, but we haven't had the translations of all of the -- I'm
23 sorry -- the attachments to that contract. And they're
24 attachments A through W. They have translated S and T, but not
25 any of the other letters of the alphabet.

1 THE COURT: When did you get the anexos (Spanish)
2 or --

3 MS. FRANCO: Let me check on those, Your Honor.

4 MS. KANOF: Your Honor, I can respond.

5 This FedEx package is the entire request from the
6 MLAT.

7 THE COURT: I'm sorry, the request for what?

8 MS. KANOF: M-L-A-T -- it's all caps -- stands for
9 Mutual Legal Assistance Treaty. It has all of the anexos except
10 Anexo W, which has -- I think is three pages long -- no, I'm
11 sorry, Anexo W is 32 pages long. And Anexo W is also in both
12 English and Spanish. And this is the package that was provided.
13 We received it March 12th of 2014. And it's the one I referred
14 to you that was picked up by FPD in April.

15 MS. ARREOLA: March 20th.

16 MS. KANOF: Oh, March 20th.

17 We've pretty much turned over everything we do -- we
18 got it, but the anexos are part of the MLAT production. And
19 what has trickled in are translations and --

20 THE COURT: Did the FPD represent him in 2014?

21 MS. KANOF: Yes.

22 We'll get you the exact date, Your Honor.

23 But they did sign for -- yes, this was actually
24 produced -- the MLAT production which is the contract with all
25 of the anexos. It was Anexo A through V, because Anexo W didn't

1 come through the MLAT. We got it from Anexo W from Mitsubishi.
2 And so that -- the Mexican government didn't provide it to us.

3 THE COURT: Did not provide it?

4 MS. KANOF: They did not. It did not come in the
5 MLAT. And so we gave them the Anexo W when we did get it. And
6 I don't remember when that was, but it was quite sometime ago.
7 It was --

8 THE COURT: And you say that's three pages?

9 MS. KANOF: It's 32 pages.

10 THE COURT: Oh, 32 pages.

11 MS. KANOF: 32 pages.

12 And it's -- there're several versions of it. We've
13 provided all of the versions that we received. And it's
14 called -- Anexo W is called -- basically, it's a document --
15 it's a technical document in which Mitsubishi insisted that it
16 be included in the subcontract, because they insisted that every
17 one know that their generators did not meet the specifications
18 of the bid. The generators were preexisting.

19 They were provided to them on March -- oh, the FPD
20 became counsel --

21 THE COURT: Ms. Arreola can tell us if she wants. I
22 mean --

23 MS. KANOF: Oh, I asked her did she want to and I
24 don't think she did.

25 As to the -- his counsel, March -- March 19th of 2014.

1 Huh?

2 And we produced them the next day.

3 THE COURT: All right.

4 Ms. Franco, do you agree with that?

5 MS. FRANCO: Mr. Hanshew was talking to me, Your
6 Honor, so I don't --

7 THE COURT: Oh, I'm sorry.

8 MS. FRANCO: I'm sorry.

9 THE COURT: She said -- she's saying that you-all
10 became counsel on -- in March of 2014, and the next day that
11 they provided that -- everything that's included in that FedEx
12 envelope, which included Anexos A through --

13 MS. KANOF: V, Your Honor.

14 THE COURT: -- V, and then W --

15 MS. FRANCO: Well, Your Honor --

16 THE COURT: -- and W came at a later date.

17 MS. FRANCO: At a later -- right.

18 And during the course of our representation,
19 Mr. Delgado, we had asked for the specks that were part of the
20 contract and that was not included in the MLAT. And so they --
21 you know, these are the things that have been coming in.

22 But you know it's interesting that they have the
23 original MLAT that has the entirety of the contract, but they
24 don't -- but they didn't translate the entirety of the contract.
25 And, yet, they want the Court, under their exhibits to introduce

1 a modified MLAT, which is I guess now is going to exclude the
2 entirety of those -- of the contract, leaving out the ones that
3 they didn't -- that they didn't translate.

4 But Your Honor, they have not been translated by a
5 certified translator, the other amendments to it. I think that
6 we're going to be absolutely ineffective, because this is
7 important to our case to be able to use the other parts of the
8 contract. When we were cross-examining Mr. Gireud, he
9 referenced CFE during the trial. And it's our error, quite
10 frankly, that we assumed and you know said anything about that,
11 that those -- that the entirety of the contract and the
12 attachments would have been provided to us.

13 Part of the confusion is that Ms. Kanof was referring
14 to things that had trickled in like the translations is because
15 Mr. Hanshew and I can read Spanish, you know, we can read what
16 these are, but I'm not going to testify and tell the jury what
17 it is and I can't cross-examine that witness on it and that's
18 part of the problem. So recently, the other -- so there's that
19 issue.

20 The other issues are that they provided some *Brady* and
21 *Giglio* to us, which is probably five or six pages that's
22 Spanish. I asked if they were going to translate that for us
23 and they said, no. So there's that.

24 And very recently, Mr. Pimentel from the first case
25 has now risen his head in this case and has now changed the

1 theory of the Government's case as to how this contract was
2 entered into within FGG. Mr. Delgado needs to be -- CFE is now
3 claiming that bribery was involved in it.

4 On Friday afternoon, Mr. Jose Luis Gonzalez gave us
5 the contact information for Mr. Pimentel, so that we can talk to
6 him to find out about this impeachment material with regard to
7 Mr. Gireud and some of the other potential individuals that the
8 Government is going to have. We need the opportunity to track
9 him down. We do have his phone number.

10 THE COURT: When did you get that notice?

11 MS. FRANCO: On Friday. And we're in the process of
12 trying to locate him, but the Government also told us he's in
13 the process of moving, so he's sort of a moving target. And if
14 we do decide we want to use him, we'll have to have them served
15 again and ask for a subpoena for him, which is not going to be,
16 you know, like that. It wouldn't be quick. So...

17 THE COURT: Do I have to get him counsel? Do I have
18 to have counsel if you subpoena him?

19 MS. FRANCO: I don't know on that, Your Honor, but...

20 THE COURT: I'm trying to remember from the other
21 case. Pimentel wasn't -- it was the young guy --

22 MS. KANOF: He's the informant.

23 THE COURT: -- from UTEP.

24 MS. KANOF: I can respond to all of this. Would you
25 like me --

1 What happened was when it got to be close to 14 days,
2 the Government started providing *Brady* and *Giglio* on 2014, as
3 soon as we learn about it, but at the time to be complete,
4 Ms. Arreola recalled that during debriefing, Pimentel knew
5 Delgado very well. They were friends. And that during debrief,
6 Pimentel made a comment about Gireud having something to do with
7 a bribe in this case. So we decide to call him to clarify it,
8 so that -- we never discussed it because it didn't have anything
9 to do with that case. And Frankly, I didn't know about this
10 case at the time.

11 And so we made that phone call in participation of our
12 deadline. We made it with Mr. Gonzalez present, two agents
13 present. And what Mr. Pimentel told us does not in any way
14 change, shape or form, change the Government's theory. The
15 Government did not charge Mr. Delgado with a violation of the
16 Foreign Corrupt Practices Act. Of course the Government did not
17 charge Mr. Delgado with obtaining the contract by bribe. The
18 Government recognizes that's how you get contracts in Mexico and
19 did not -- that's not the gravamen of the indictment. He's
20 charged with a bunch of lies to steal money from the contract.
21 And Mr. Gireud, I think the testimony will show, didn't know
22 that was happening.

23 But we do have a *Brady* obligation to the extent that
24 it could possibly be considered *Brady* or *Giglio*. We called
25 Mr. Pimentel and he told us that he recalled that Mr. Delgado

1 sent Mr. Pimentel and Mr. Gireud to an individual named Nervo,
2 N-E-R-V-O, Vargas. He's not the actual head of the electrical
3 union, but he's the functional head, very, very powerful man.
4 If he doesn't send his workers to the power plant, it doesn't
5 get built. And Mr. Pimentel's family had been friends with
6 Vargas. Delgado met Vargas and became very close to
7 Mr. Pimentel and said Mr. Vargas does work by bribes.

8 So he said Mr. Delgado sent him and Mr. Gireud to
9 Mr. Vargas to find out what he wanted to get the contract. So
10 we -- he also -- so we brought Mr. Gireud in to ask him about it
11 on Sunday, again, with everybody present. And in fact,
12 Mr. Gonzalez was the lead inquirer -- inquirer about it. And so
13 Mr. Gireud did admit he assumed that that was the way they had
14 to get a contract. He not only said that, he didn't recall what
15 specifically Mr. Pimentel said, specific instance, but he did
16 say that, you know, he knew that that's what Delgado was doing.
17 He turned a blind eye to it. But there was a specific instance
18 where they were in Las Vegas where Mr. Vargas goes and asked
19 Mr. Gireud for \$5,000 for a bribe, and Mr. Gireud said, no,
20 because he didn't have \$5,000.

21 So it has nothing to do with the Government's theory
22 of the case. It was merely an obligation for impeachment. They
23 can ask him, Mr. Gireud, till the cows come home, bribe the
24 Mexican Government. I don't care. It doesn't have anything to
25 do with what is charged with the indictment, how the contract --

1 everybody looks at that contract and this must be a bribe
2 because the other two bidders were General Electric and Siemens
3 of Germany.

4 Now, FGG, which was recently formed in a corporation
5 out of El Paso with one member, Mr. Gireud and -- and to -- Your
6 Honor, Mr. Delgado could have gotten that contract, you know, a
7 kindergartner would have known it was a bribe. It isn't a
8 surprise to anybody nor believed or understood or turned a blind
9 eye that that's how they were getting contracts. That's what
10 Mitsubishi thought, I am sure. But that's what really happened.
11 So there's no change in theory going on here.

12 With regard -- and I agree with the Court's
13 interpretation to the rule of completeness and translation. I
14 would just, if the Court will indulge me, I'd like to give some
15 law.

16 THE COURT: That's always a good --

17 MS. KANOF: Well, I have this planned, so if the Court
18 will indulge me.

19 UNKNOWN SPEAKER: Your Honor, may I say something
20 before to make a little correction here.

21 The Government is not saying that all contracts
22 entered in Mexico are by corruption. I don't want to believe
23 that. I don't want somebody to go out and report that the
24 United States is taking that position, because I want to make
25 that clear for the record.

1 MS. KANOF: I'm glad he said that, Your Honor. The
2 majority of businessmen in Mexico are probably honest, but
3 having prosecuted a whole lot of Americans for taking bribes for
4 contracts here in El Paso, I didn't mean to imply that Mexico
5 was the only location or that that was the only way they did
6 business, so I do apologize if I left that impression.

7 Your Honor, in talking about the rule of completeness,
8 Whitmore liked to (indiscernible) McCormick, would quote, could
9 hold up the Bible and say, there's no God, because in the Bible
10 there's a quote that says there's no God. But rule of
11 completeness, the believer would have entitled -- be entitled to
12 give the entire quote, which is the fool hath said in his heart
13 there's no God.

14 But what the Fifth Circuit says about that it is
15 incumbent on the opposing party if they think the portion that
16 has been placed into evidence is not complete, well, could
17 have -- or confuse the jury, they have an obligation. And that
18 obligation according to *U.S. v. Garret*, 716 F.2d 257 is that
19 they must show -- or at least a better case, *U.S. v. Crosby*, 713
20 F.2d 1066 -- they must show precise that the portion they wish
21 to admit at the time encourages completeness, that it is
22 relevant, that it will assist the jury and that -- and also that
23 it's admissible, that --

24 And in this particular case, I will tell the Court one
25 of the reasons the Government did not translate everything, and

1 one of the reasons that they only proposed to put in those parts
2 that are relevant is because unlike the United States, Mexico
3 still uses lots of legal jargon that is meaningless pages and
4 pages of irrelevant stuff, explain who people are, "whereas" and
5 "therefore" and all of that kind of stuff, we could not afford
6 the money to translate. But in addition to that, in this
7 particular case in these documents, the Government believes that
8 putting the whole document in would actually confuse the jury
9 more. So the government in its case-in-chief chose to provide
10 those documents and translate those documents and translation
11 that would in our opinion prove the Government's case and assist
12 the jury.

13 The defense can stop us when we put that in and show
14 the Court it will confuse the jury in -- if that's all in there,
15 this portion needs to be in here, too, and we've translated it
16 and it needs to go in right now so as not to confuse the issue
17 and it's relevant to the issue and we, of course, have no
18 objection to that because it's consistent.

19 I do have case law on the translation issues as well,
20 but I think --

21 THE COURT: Case law on the translation issues?

22 MS. KANOF: -- on whether or not we have to translate,
23 we don't.

24 THE COURT: Oh.

25 MS. KANOF: But the Court has already -- I have many

1 cases from every other that agrees with the Fifth Circuit. The
2 Fifth Circuit is pretty strong about not having a requirement to
3 put in the whole document and it basically is incumbent upon the
4 true believer.

5 THE COURT: Did they talk about the burden of
6 shifting?

7 MS. KANOF: There's no burden of shifting, Your Honor.
8 Never saw a burden of shifting in any of the cases.

9 Does the Court have any other issues that need to be
10 addressed? I did want to give them a couple of cases and *U.S.*
11 *Branch*, another case -- it's another Fifth, 91 F.3d, 699, and
12 opposing party has to provide relevancy, but they have to do it
13 with, quote, particularity, relevance, necessity and explain how
14 it would be required in that place in context so that the jury
15 can understand it.

16 THE COURT: But those cases are limited to the rule of
17 optional completeness.

18 MS. KANOF: They are.

19 THE COURT: They can always, but it in their case in
20 chief.

21 MS. KANOF: They're all Rule 106.

22 THE COURT: Yeah. Okay.

23 MS. FRANCO: Your Honor?

24 THE COURT: Are we in a big hurry to try this case?
25 If the Public Defender wants time to translate the "but fors"

1 and "heretos"...

2 MS. KANOF: My only concern, Your Honor, is speedy
3 trial. This will be the ninth --

4 THE COURT: They did waive speedy trial, right?

5 MS. FRANCO: Yes, Your Honor. If we've -- if I could
6 let Mr. Hanshaw take over, because I'm --

7 THE COURT: Oh, yes. I'm sorry. And thank you,
8 Ms. Franco, for being here and offering your voice for what you
9 could. Hope you feel better.

10 MR. HANSHEW: Thank you, Judge. I'll be the voice
11 from now on.

12 I think the last question is really relevant here
13 which is I did confer with Mr. Delgado myself about the issues
14 that have come up in the last week which -- and to get his
15 response in terms of if he would have any opposition to continue
16 with the trial in this case. He indicated he would not. He
17 would waive speedy trial consideration. And I just wanted to
18 just quickly summarize.

19 In total, I think that the issues in the last two
20 weeks that have come up at the forefront is this issue about
21 whose obligation it is to provide the interpretation -- the
22 English interpretation, certified, no less, of this contract.
23 And I won't repeat everything Ms. Franco indicated, but in terms
24 of the rule of completeness, yes, I'm not disagreeing with the
25 Court's commentary about, you know, how that happens.

1 Obviously, the direct party puts their evidence, the opposing
2 party can then say you need to include, you know, "X" "Y" and
3 "Z" to make that complete, and that is the process.

4 The wrinkle in this is that frankly I think our
5 offices have been trying, and one of the only things we've been
6 able to work out in total of this is the passing of the
7 information in terms of translations. And the Court will
8 remember Ms. Kanof, not the sentencing in the last case, the
9 last hearing in this case, even acknowledged presentencing
10 concerns about later disclosures of translations. She indicated
11 we'll be providing those as we go. For better or not, we took
12 that to understand that there would be translations of all of
13 the pertinent documents.

14 It's undisputed from the Government that this contract
15 and the anexos (Spanish), the annexes that are attached, which
16 are incorporated by reference and the specifications which even
17 Ms. Kanof raised earlier, complete and make up what is the
18 contract.

19 THE COURT: When did the defendant get the
20 translations?

21 MR. HANSHEW: We received -- oh, gosh, Judge.

22 THE COURT: What I don't want is for both of you to be
23 spending money on translating the entire document. It makes
24 sense to receive the portion she wants and then you translate
25 the portion you want.

1 MR. HANSHEW: And that is exactly the point where we
2 got to last week, which is -- the short -- and I'll take
3 responsibility for this. I should have probably long ago said,
4 please identify which specific ones you're going to provide and
5 by what date that was going to happen. Instead what occurred
6 was last week, Ms. Franco spoke with Mr. Gonzalez to confirm
7 that there would be the rest of this, what we thought the rest
8 of the translation was coming, and we were told that was the end
9 of the translations, which obviously caused this, you know, this
10 rift and great concerns on our parts and the back and forth
11 about whose responsibility it is.

12 The documents as they are shown, that's part of it,
13 but the specifications are part of it. And I can, just by
14 visual -- I couldn't give you a page count -- but we have in our
15 office two binders full. And I know in the conversations
16 between Mr. Gonzalez and Ms. Franco, you know, there was visual
17 discussions of documents, you know, knee high, plus it's the
18 type of thing that had not been certified -- hadn't received
19 certified translations, grave concerns of economics, you know.

20 From the Government's perspective, they indicated that
21 DOJ was not going to do -- spend the resources to do that. You
22 can imagine if DOJ is concerned about their resources, our
23 little public defender office in a district, you know, is
24 concerned about the finances.

25 That being said, we're obviously at a point now, and

1 that's why I raise it with this Court that -- to take the
2 Court's guidance, it appears that what the Court is indicating
3 today that, you know, it would be -- the burden would be on us
4 to do that, which, you know, we will -- we'll do if that's
5 what's required, but it's going to take time. These
6 translations take time. I know we've seen from the Government,
7 and Ms. Kanof explained last time, the translations will be
8 coming as time passed, because it took some time and effort.
9 It's going to take us time to do that as well.

10 So in terms of asking for a continuance and speedy
11 trial concerns, that's the first and foremost problem we have in
12 front of us.

13 The other issues have been the submission of *Brady* and
14 *Giglio*. And to be clear about this so that there's -- I'm not
15 implicating bad faith on the Government, that component of it,
16 but the Government complied with the Court's scheduling order,
17 which was to provide *Brady, Giglio* two weeks before trial was
18 the scheduling order on May 9th. We received letter information
19 attached to that from Mr. Gonzalez detailing that information.

20 What had been accompanying that over those few weeks
21 as well, as soon as Mr. Gonzalez noticed his appearance in this
22 case, had been their continuing discovery obligations is, I
23 think they word it, they were meeting with witnesses and
24 providing new information. And this -- it wasn't just random
25 information. It wasn't extrinsic. It wasn't irrelevant

1 information. It was, for example, the chief attorney for CFE
2 that's involved in this was investigated and found in the wrong
3 by Mexican government agencies as it relates to this contract.
4 It was, for example, last week, finding out that Mr. Pimentel
5 had recently been interviewed and provided this information that
6 their star witness, Mr. Gireud, that we heard and talked about
7 and was emotional about how closely he felt to this person, lied
8 and was actually at a meeting by himself with Mr. Pimentel,
9 summons Mr. Delgado to set up a bribe in this contract. So this
10 isn't just, oh, by the way, information about some, you know,
11 random letter. This is information that impeaches and in fact
12 implicates their witness in that crime that relates specifically
13 to the contract that's at the heart of this case. The heart of
14 their case is about what Mr. Delgado was authorized or not to do
15 in terms of this contract and obligations of the various
16 parties. So this is the type of information we get. We get as
17 you heard that Mr. Pimentel is out of state moving and we have a
18 phone number. We don't know if he's represented by counsel.

19 And I think the Court raised an excellent question.
20 Should the Court appoint counsel? I frankly would ask that the
21 Court do that, because I don't want to get involved in another
22 Gireud, you know, escapade here. We don't want to speak to
23 someone who isn't represented by counsel, that's why we reached
24 out to Mary Stillinger, who received court materials, talked
25 about accepting service. And she said, well, I haven't talked

1 to him for so long. You know, I don't think I'm his lawyer
2 anymore. So here's Rene Ordoñez, otherwise, our office doesn't
3 want to and I am sure the Court wouldn't want me to unless it's
4 compelled.

5 So by grave contrast, I can tell the Court that
6 dealing with Matt Herrington, the attorney for FPSA on this
7 case, which I did on a regular basis throughout their
8 submissions to this Court, was a pleasure. It was the normal
9 process. It was two lawyers meeting, conferring, not once to be
10 clear to clarify something, not once did he in all of
11 discussions we have indicate that he was going to file a motion
12 to quash. In fact, the only issue that even remotely got to
13 that was questions about attorney/client privilege, particular
14 areas addressed there we worked that out. And you saw by the
15 cover letter attached, this is how that process works, a lawyer
16 to lawyer, meeting, conferring, and they submit the documents to
17 the Court.

18 But again, I think as far as Mr. Pimentel is I think
19 he should have an attorney. His statements implicate him in a
20 crime. His statements implicate their star witness is a client.
21 He also -- Ms. Kanof left out his statements -- not only do they
22 implicate Mr. Gireud, their star witness as being involved in a
23 crime with him with Mr. Delgado at that time, but we received
24 the *Brady, Giglio* from the Government, which are the statements
25 that Mr. Gireud had been giving to the Government and none of

1 that included admissions by Mr. Gireud that he had been involved
2 in the bribe scheme with Mr. Pimentel. So it appears he has
3 also broken whatever agreements he has with the Government.

4 So again -- and this is the type of information that
5 we now as of Friday have a phone number for that we have to
6 investigate, reach out to, perhaps subpoena this individual and
7 go through this process, which makes again a Monday trial date
8 an impossibility for us in this case. And that is the issue
9 that has been partly -- I think, we have reached the end of the
10 road, because hopefully the Government at this point, and what
11 they've done in the last two weeks in the run of this trial has
12 given us everything now, now that they've spoken with this
13 witness, received new documents, new testimony and statements
14 from them. And they have been, you know, as Mr. Gonzalez has
15 been diligently, you know, providing to Ms. Franco and myself,
16 that part has been done, but it's only fair and due process at
17 this point that we be allowed to actually investigate and
18 prepare that information for a trial which is an impossibility
19 for Monday, Judge.

20 THE COURT: I'm not taking up a motion to continue
21 right now. This was just a status hearing. We'll take up all
22 of these motions on Thursday and give everybody a chance to
23 subpoena witnesses, put on whatever you want. We'll be here all
24 afternoon and night to get that done.

25 I'll tell you what my impressions are, which are

1 subject to change. These are not set in concrete. My first
2 impression is I probably will grant the continuance based on
3 that. My first impression is I don't think that what happened
4 here is so egregious that I would take that extraordinary step
5 of removing a member of the other branch of government from this
6 case. If there are any ethical or other criminal concerns,
7 that's going to be somebody else's issues. It's not mine,
8 because it doesn't impact the fairness of the trial to your
9 client. That's what I was primarily concerned about, whether
10 there were any documents that were removed from the stack that
11 was produced. That concerned me. I don't think that's
12 happened. I'll give you an opportunity to prove that it did
13 happen at this hearing. My general impressions, what I heard,
14 I'll probably grant you a continuance. I can be convinced this
15 is so egregious that I would have to remove all of the AUSAs
16 from the Western district, but that's not my first impression.

17 MR. HANSHEW: I understand, Judge. One issue relates
18 to the issue for Thursday on the motion to dismiss and
19 disqualify. The only way we would be able to have witnesses,
20 which would obviously be Mr. Gireud, the Government, its agent,
21 would be through subpoena. Any subpoenas for the Government or
22 its agents are subject to Touhy, which is a process that would
23 take longer.

24 THE COURT: What's Touhy?

25 MR. HANSHEW: Touhy? It's a case. And it basically

1 requires that there's more extended administrative process to
2 get the approval from the Department of Justice on when you
3 subpoena federal agents and/or prosecutors and also the issue
4 with Mr. Fernando Gireud. I can reach out immediately to his
5 new counsel, who I found out is his son's law partner, and ask
6 if he'd accept service for subpoena, but I don't know if he
7 would do that and/or if he would be available for Thursday. I'm
8 putting it out there. I don't want to -- to happen Thursday and
9 say, Judge, we're out this, but the Touhy process, the
10 Government can speak better to how long that is, but it's
11 definitely not a two-day turnaround.

12 THE COURT: Ms. Kanof? I mean because, basically,
13 that's going to force me to decide the continuance right now if
14 having the hearing is going to take us beyond the trial date.

15 MS. KANOF: Your Honor, if I can also respond to a few
16 misstatements made by Mr. Hanshew. We'll get a copy for the
17 Court to put in evidence.

18 On July 16 of 2014, that's almost two years ago, the
19 Government sent its first discovery letter. And we have
20 receipts from FPD. We have practiced in this case -- in the
21 past, the Government likes to notify (indiscernible) -- meeting,
22 potential agent, AUSA's case agent takes notes and commits these
23 notes to writing. While these statements are not technically
24 Jencks material, we have in the past permitted your client,
25 former counsel, to read these. And other agent again

1 memorialized interviews in the U.S. Attorney's office in advance
2 of trial. We are extending that offer to you as well.

3 The letter goes on, but it includes two single-lined
4 summaries of the first interview we had with Miller and Fernando
5 Gireud. We extended that invitation two years ago and the
6 defense never took us up on it. We extended an invitation for
7 the defense to come over and look at records that were hard to
8 copy like bank documents, and the defense never availed
9 themselves to that invitation. We have many, many discovery
10 letters, because it is Ms. Arreola's and my practice to do that.
11 We did it with Mr. Esper and Mr. Velarde, who did avail
12 themselves in many cases.

13 This -- Mr. Hanshew seems to have the impression that
14 Mr. Gonzalez came into this case and was providing them with
15 things. No, that's not what happened. Ms. Arreola and I were
16 providing them to Mr. Gonzalez to forward. He was just an
17 intermediary on our behalf.

18 The attorney, Mr. Moreno Nunez, we didn't know he was
19 going to be a witness. He came to El Paso a couple of weeks ago
20 and immediately, and during that interview, told us not that he
21 had -- what he told us is he had investigated an administrative
22 proceeding in which they blamed him in 2014 for having been
23 present at the opening of the bids and having not taken action
24 to point out to them some irregularities in the bids. He said
25 I'll send it to you.

1 He sent it to us. We sent it by e-mail immediately
2 that day to defense counsel. There is nothing that we have
3 provided them that we did not give to them within a day or maybe
4 two days of what we received.

5 As far as talking to Mr. Gireud and Mr. Pimentel,
6 defense counsel has turned due diligence into nefarious conduct.
7 We didn't have to do any of that and they wouldn't have known.
8 They didn't have to make a motion to extend and they wouldn't
9 have known, but we did.

10 It's just very difficult -- Francisco Moreno Nunez is
11 not the chief attorney general for CFE. He is a subs --
12 sub-deputy at the time, just happened to do some rough drafts
13 and CFE offered him with knowledge. He's one of the few people
14 that's still there. There's another attorney that we spoke
15 with. He had some knowledge and he's also going to be a
16 witness. He didn't have Spanish.

17 And then there's a substantive witness and we also
18 told them his name is Buendia, that he's going to testify, none
19 of which we had to do. We've been extremely open and we have
20 every discovery letter, every receipt.

21 If this Court will remember, in its first motion the
22 knee jerk reaction that we gave them so much material, and of
23 course the Government provided the Court with the Bate stamped
24 numbers provided two years before, but evidently the defense
25 attorneys were unaware of what they had.

1 With regard to Mr. Hanshew's dealing with
2 Mr. Herrington, the letter speaks for itself. Again
3 Mr. Herrington provided Bate stamped numbers of things that
4 defense counsel has had more than two years and violation 17(c)
5 subpoena.

6 He -- the most interesting thing Mr. Hanshew said is
7 that Ms. Franco said Mary Stillinger said she was not his
8 attorney, and Ms. Franco -- Mr. Hanshew just said Ms. Stillinger
9 said I don't even think I'm still his attorney or his lawyer.
10 That's not even consistent with each other. They want to call
11 Mary Stillinger. I can only represent to the Court what she
12 told the Government and that was that she was.

13 But Your Honor, the Government has no objection in the
14 interests of truth and justice in the court system to a
15 continuance. They do have an objection when both the actions of
16 the Government are misrepresented as is Mr. Gonzalez was brought
17 in because myself or Ms. Arreola had done something wrong, he
18 was not, and as if the Government has not complied with their
19 obligations, because they have.

20 THE COURT: Well, you know, when the zealous advocates
21 meet in the well of the court, it often creates such friction
22 that it seems much more important to the applicants than to the
23 Court. The bar here at the bench somehow insulates the Court
24 from those sort of engagements between the litigants, and I
25 certainly -- I listen to advocates. I don't take a lot of that

1 to heart to mean anything. Here's a zealous advocate
2 representing their client to the -- we should be very grateful
3 tries cases, because trials are starting to disappear, and I
4 just -- I don't know any lawyers who spend all of the time to go
5 to law school and getting barred that don't have a very basic
6 desire to be at trial. And you-all are very lucky that you get
7 to be in trial, because there's a lot of people, really smart
8 lawyers, who don't get that opportunity. And I've had a lot of
9 people come through my chambers, brilliant minds, that never get
10 the opportunity to go to court much less trial. And it's a
11 great opportunity we have. So we shouldn't let the zealous
12 advocacy destroy what is otherwise kind of a pleasure we all get
13 to enjoy, those of us that get to participate in the courtroom.

14 Anyway, Mr. Hanshew, I didn't mean to interrupt you.

15 MR. HANSHEW: I'll close with the part that just to be
16 clear as I said in my -- no way what I said to say that they
17 have been acting nefariously. I actually opened with that. And
18 my comments about -- just to be clear about Mr. Gonzalez, that's
19 where it came from and I received it and I appreciated it.

20 And I appreciate the Court's comments. I'm very proud
21 to be an officer of the Court. I know they are as well, Judge,
22 and we all look forward to coming here and giving Mr. Delgado
23 his constitutional right.

24 THE COURT: All right.

25 MR. HANSHEW: Thank you Judge.

1 MS. KANOF: I have a legal matter, Your Honor.

2 THE COURT: Mr. Garcia?

3 MS. KANOF: If you do plan on continuing the case,
4 he's our speedy trial expert.

5 THE COURT: Is there a problem?

6 MS. KANOF: I don't know if there's a problem,
7 although the defendant waives the -- may waive or is
8 waivering --

9 THE COURT: I have no problem if you draft the order
10 drafting an order for continuance.

11 MR. HANSHEW: I have no problem.

12 THE COURT: And Mr. Delgado, I'll ask you since you
13 are here. Do you have any objection to the motion that I expect
14 to get from your counsel that they move to continue the trial
15 setting for next Monday, May 23rd?

16 DEFENDANT DELGADO: None.

17 THE COURT: And would you waive any speedy trial that
18 you have with the statute?

19 DEFENDANT DELGADO: Yes.

20 MS. KANOF: We have witnesses under subpoena for
21 Monday, Your Honor, and you know reservations and hotels and
22 airplanes...

23 THE COURT: And I know that, too. I know that
24 sometimes these continuances are a burden on the Government.

25 MS. KANOF: I'm not saying that -- I just wanted to

1 know whether or not they should still be on standby.

2 COURT'S RULING

3 THE COURT: No. I'm going to grant the motion. I
4 will grant the motion now so it's on the record. If you bring
5 the order, I'll sign that order.

6 And I appreciate all of the hard work that you do on
7 behalf of the Government.

8 Mr. Hanshew, I always appreciate the hard work that
9 the public defender does and excellent work in representing
10 their clients. It's a blessing to participate in trials where
11 counsel is so competent on both sides. It's a nightmare if
12 you've ever had to -- where that's not the case.

13 MS. KANOF: Your Honor, are you going to postpone the
14 Thursday hearing to give --

15 THE COURT: We can. That way -- because I'm hearing
16 Mr. Hanshew say I'm going to look up Touhy. I didn't realize
17 the defendant had to ask permission of the Government to
18 subpoena the Government.

19 MS. KANOF: Not -- basically they have to make a
20 request to homeland security and they have to submit the
21 questions they would ask the agent. We can probably hurry up
22 that process and then they have to do the same if they're going
23 to call myself or Mr. Gonzalez or Ms. Arreola to the Department
24 of Justice. And then I think we can expedite -- Eddie Castillo,
25 our civil attorney handles the request in my office and other

1 requests in that that's what you want me to ask.

2 And with regards to the setting of the trial, Your
3 Honor, we did communicate all of our conflicts or dates of
4 rescinding a trial and our biggest concern is the case agent
5 Josh Fry being -- went to the Secret Service to do protection
6 detail for the -- and that is for the United States Presidency.
7 He will be called intermittently and hopefully have the dates in
8 advance of having to do that, but...

9 THE COURT: Should I just allow the two of you to
10 agree on a date and just notify the Court?

11 MR. HANSHEW: Two months?

12 One, I think we can meet, confer on the Touhy subject
13 and get that narrowed out and, two, meet on those dates. We can
14 for sure have the date today with a proposed order.

15 Is that okay, Ms. Kanof?

16 MS. KANOF: (Nodding head affirmatively.)

17 THE COURT: A trial date and date for the hearing put
18 on whatever --

19 MR. HANSHEW: Yes, Your Honor.

20 THE COURT: -- Touhy.

21 Anything else?

22 MS. KANOF: Nothing further.

23 MR. HANSHEW: Nothing further.

24 THE COURT: We are adjourned.

25 (Proceedings concluded at 11:21 a.m.)

* * * * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signature: /S/KATHLEEN A. SUPNET
Kathleen A. Supnet, CSR

May 21, 2016
Date

KATHLEEN A. SUPNET, CSR